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SOFTSCAPE, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

12 | SUCCESSFACTORS, INC, a Delaware corporation,

Case No. CV 08-1376 CW (BZ)

Plaintiff.

VS.

15 SOFTSCAPE, INC., a Delaware corporation,
16 and DOES 1-10, inclusive,

DISCOVERY MATTER

**EX PARTE MOTION FOR
ADMINISTRATIVE RELIEF FOR
LEAVE TO FILE PORTIONS OF
REPORTER'S TRANSCRIPT FOR
3, 2008 HEARING UNDER SEAL;
DECLARATION OF JEFFREY
RATINOFF**

Judge: Honorable Claudia Wilken
Magistrate: Honorable Bernard Zimmerman

Complaint filed: March 11, 2008
Trial Date: None set

1 Pursuant to Civil L.R. 7-10, 7-11, and 79-5, Defendant Softscape, Inc. (“Softscape”) hereby
2 moves the Court for an ex parte order to allow the parties sufficient time to review the reporter’s
3 transcript from the July 3, 2008 hearing in this matter and to file requests that portions of the
4 transcript discussing highly confidential and proprietary information to be filed under seal.

5 The Protective Order governing this case (Docket No. 89) requires the court reporter to
6 separately bind and not make publicly available material protected under the protective order. At
7 the hearing, certain matters that were designated by the parties as either “Highly Confidential -
8 Attorneys Eyes Only” or “Highly Confidential - Outside Attorneys Eyes Only” were discussed. In
9 particular, Softscape’s extremely sensitive confidential competitive business information, which
10 was designated as “Highly Confidential - Outside Attorneys Eyes Only” prior to the hearing, was
11 discussed in detail. Such information was also the subject of a prior motion to seal portions of the
12 parties’ Joint Case Management Statement. (Docket Nos. 137, 142). Recognizing the confidential
13 nature of this information, Judge Wilken granted the request and ordered that the portions of the
14 statement discussing the information (which was also discussed at the July 3rd hearing) be filed
15 under seal. (Docket No. 148).

16 The court reporter responsible for the preparation of the transcript for the July 3rd hearing
17 has indicated that absent an order from this Court, the transcript will be made publicly available and
18 electronically available on Pacer as soon as Friday July 11, 2008. If this were to occur, Softscape
19 would suffer irreparable harm from the disclosure of certain information disclosed and discussed at
20 the hearing.

21 As certain information that Defendant SuccessFactors, Inc. (“SuccessFactors”) has
22 designated under the Protective Order as “Highly Confidential - Attorneys Eyes Only” was also
23 discussed, SuccessFactors indicated that, while it would not stipulate to this motion, it would not
24 oppose it. Accordingly, Softscape respectfully requests the Court issue an order:

25 (1) Requiring the court reporter to provide copies of the final transcript to both parties
26 by Wednesday, July 16, 2008;

27 (2) Providing the parties until Wednesday, July 30, 2008 to file a motion for
28 administrative relief per N.D. Cal. L. R. 79-5 to designate and file confidential portions of the

1 transcript under seal; and

2 (3) Directing the court reporter to not release the transcript for the July 3, 2008 hearing
3 to the public, place the transcript on the publicly available paper docket or Pacer, or make it
4 otherwise available to the public, until such motion has been ruled on, and then only place the
5 transcript with the appropriate portions redactions on Pacer as so further ordered by the Court.

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7 Dated: July 10, 2008 Respectfully submitted,

8 MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO P.C.

9 /s/ Jeffrey M. Ratinoff

10 By: JEFFREY M. RATINOFF
11 Attorneys for Defendant,
12 SOFTSCAPE, INC.

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DECLARATION OF JEFFREY M. RATINOFF

I, Jeffrey M. Ratinoff, declare as follows:

1. I am Of Counsel at the law firm of Mintz Levin Cohn Ferris Glovsky & Popeo PC, counsel of record for Defendant Softscape, Inc. (“Softscape”). I make this declaration based on my personal knowledge, and if called to testify would testify competently testify to the matters contained herein.

2. On April 23, 2008, this Court entered a Protective Order regarding confidentiality in this case. Pursuant to paragraph 5.2(b) and 10 of the Protective Order, any document filed in this action which contains confidential information should be filed under seal in accordance with Civil Local Rule 79-5.

3. At the July 3, 2008 discovery hearing before the Honorable Bernard Zimmerman, information was discussed that had been previously designated by Softscape as "Highly Confidential - Outside Attorney's Eyes Only" under the terms of the Protective Order. Such information constitutes extremely sensitive, confidential, competitive business information whose disclosure to another party or non-party could create a substantial risk of serious injury that can be avoided by keeping the information confidential by filing under seal.

4. Substantially similar information was disclosed in the parties' Joint Case Management Statement. As such, Softscape sought an order sealing portions of the statement disclosing this information. The Honorable Claudia Wilken acknowledged the confidential nature of this information and ordered that portions of the statement referencing this information be filed under seal per Softscape's request.

5. On July 9, 2008, I spoke with Connie Cool, the court reporter at the July 3rd hearing, concerning the status of the transcript and whether the parties would have an opportunity to seek having portions filed under seal before it is placed on Pacer. She indicated that she intended to place the transcript on Pacer as earlier as July 11, 2008 without first allowing the parties to review the transcript. I explained to her that the parties needed to review the final transcript and seek to seal portions of it before it was placed on Pacer. Ms. Cool indicated that she would not provide the transcript to the parties without instructions from the Court. She also agreed to not place the

1 transcript on Pacer until the Court provided further instructions.

2 6. Once Softscape receives the July 3, 2008 hearing transcript, Softscape will timely
3 file an additional request pursuant to Rule Civil Local Rule 79-5 to narrowly seal only the portions
4 of the transcript that disclose the aforementioned confidential information.

5 7. On July 10, 2008, I asked Laurence Pulgram, counsel for SuccessFactors, whether he
6 would oppose Softscape's request. While Mr. Pulgram did not agree to stipulate to this motion, he
7 indicated that SuccessFactors would not oppose it.

8 I declare under penalty of perjury, under the laws of the State of California that the foregoing is
9 true and correct, and that this declaration was executed in Palo Alto, California.

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11 Dated: July 10, 2008

/s/ Jeffrey M. Ratinoff

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JEFFREY M. RATINOFF

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